

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

GREGORY PLATER §
v. § CIVIL ACTION NO. 6:14cv506
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Gregory Plater, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the actions of his appellate attorney with regard to the appeal from his criminal case. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Plater was convicted of robbery, receiving a sentence of life imprisonment. Rex Thompson was appointed to represent him on appeal. On June 20, 2008, the Sixth Judicial District Court of Appeals affirmed the conviction. Plater v. State, civil action no. 06-07-0063-CR, 2008 WL 2469055 (Tex.App.-Texarkana 2008, no pet.).

Plater complains that after his conviction was affirmed, he never received any correspondence from Thompson informing him that his appeal had been denied or telling him about his right to petition for discretionary review. On December 18, 2012, Plater filed a state habeas corpus application seeking an out of time appeal or petition for discretionary review, but the Texas Court of Criminal Appeals denied this application on August 21, 2013.

In his federal habeas petition, Plater argued that Thompson rendered constitutionally ineffective assistance by failing to inform him of the outcome of his appeal and of his right to

petition for discretionary review. In reply, the Respondent contended that Plater failed to set out a cognizable claim for federal habeas corpus relief.

After review of the pleadings and the state court records, the Magistrate Judge issued a Report recommending that Plater's habeas petition be dismissed with prejudice. The Magistrate Judge determined that Plater failed to show harm because he did not allege that he would have sought discretionary review had he been informed of his right to do so and that Thompson had no duty under federal law to inform Plater of the decision of the appellate court and of his right to seek discretionary review. Plater filed objections to the Magistrate Judge's Report essentially repeating the arguments made in his petition and pointing to state law cases in support of his claim for federal habeas corpus relief. Docket No. 15.

The Court has conducted a careful *de novo* review of the pleadings in the cause, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge (docket no. 11) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Gregory Plater is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 26th day of January, 2015.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE